

*Nova Scotia.*

John Grant - - - - - Appellant.

Henry Newton - - - - - Respondent.

## The Respondent's CASE.

**T**HE Appellant Mr. *John Grant*, together with *James Bechino*, Master of the Ship *Rising Sun*, laden with *Port Wines* and *Lemons* at *Oporto*, made Report to the Respondent, as Collector of the Customs at *Halifax*, in the Province of *Nova Scotia*, of the Arrival of the said Ship at *Halifax* from *Oporto*; and represented that the said Ship was laden with Refreshments for his Majesty's Squadron under the Command of *Admiral Saunders*: Upon which the Respondent demanded the Papers relative to the Cargo, and the Master produced to the Respondent the following Papers only, and no others.

### Instructions for Captain James Bechino.

S I R,

YOU are to proceed, with the *Rising Sun* and her Cargo, from this Place to *Halifax*, in *Nova Scotia*, where you will probably find Mr. *Robert Grant*, to whom the Cargo is consigned; but, in case the said Gentleman should not be there, you are then to deliver your Letter to *Samuel Moore*, Esquire, Secretary to the Admiral, to whom you will find it directed in the other's Absence, and to act in regard to the Cargo as he shall direct and order. If it should happen that neither Mr. *Grant* nor Mr. *Moore* should be at *Halifax*, you must then proceed with the Ship and Cargo to *Cape Breton*, unless that either or both the said Gentlemen should have left there contrary Orders; which you must in such Case comply with. We have sent on board the *Rising Sun* a Couple of Goats, a Dozen of Turkeys, Two Dozen of Capons, and a Couple of Lemon-Trees. These are a Present for the Admiral; of which we beg your particular Care; and, wishing you a good Voyage, we remain truly, Sir, your Friends and Servants.

*Bearsley and Co. Oporto, May 12th, 1759.*

By *Charles Saunders*, Esquire, Rear Admiral of the White Squadron of his Majesty's Fleet, and Commander in Chief of all his Majesty's Ships, employed or to be employed in *North America*.

THESE are to certify the *Snow Boscawen*, Mr. *Nicholas Brown* Master, is bound to *Oporto*, under my Directions, for Refreshments for the Squadron under my Command, and from thence to *Louisburgh*; which *Snow* you are not detain or molest in her Passage, upon any Account whatsoever. Given under my Hand this 27th January, 1759.

*Charles Saunders.*

To all and singular Commanders of his Majesty's Ships, as well as Private Ships of War, and the Collectors of his Majesty's Customs, or whom else it may concern.

By Command of the Admiral. *Samuel Moore.*

THESE are to certify, that the *Boscawen Snow*, *Nicholas Brown* Master, not arriving here in time to go with Refreshments for the Use of the Squadron under the Command of *Charles Saunders*, Esquire, Vice-Admiral of the Blue, and Commander in Chief of all his Majesty's Ships, employed or to be employed in *North America*, We were obliged to freight the Ship *Rising Sun*, *James Bechino* Master, to go in her Stead. Witness our Hands the 12th May, 1759.

*Bearsley and Co.*

This is to certify, that the above Firm is the Hand Writing of Messieurs *Bearsley and Co.* Merchants of this City. *Oporto, May 14th, 1759.*

*J. Whitehead, Consul.*

It having been notorious, that great Quantities of Wines had been brought into *Halifax* from *Portugal*, and also great Quantities of Tea and other *East India* Goods from *Holland*, under the Specious Pretext of Refreshments for his Majesty's Fleets, and sold for the private Advantage of the Freighters, and Admiral's Secretaries, unknown to the Admirals and Commanders in Chief; and great Complaints having been made by the principal Merchants of *Halifax*, of the Hardships they laboured under, on account of this illicit Practice, the

Respondent



Respondent (who was Collector of his Majesty's Customs in the Province of *Nova Scotia*) thought it his Duty to use his best Endeavours to prevent such Frauds for the future ; and the Respondent, from the Complexion of the Papers produced by the Appellant, having the greatest Reason to suspect, that the Cargo of the *Ship Rising Sun* was intended to be run for the private Advantage of Messieurs *Bearsley, Grant, and Moore*, under Colour of Admiral *Saunders's* Certificate for the *Snow Boscawen*, whilst that *Snow* actually carried another Cargo to the Admiral's Fleet then in the River *St. Lawrence* : And there being no Certificate produced of the *Ship Rising Sun* being registred, as is required by the Act of 7th and 8th *William 3d*, for Want whereof the said Ship became forfeited ; the Respondent therefore, having first obtained an Officer and Twelve Men from the Governor (as was usual in all these Cases) directed the Surveyor and Searcher of his Majesty's Customs to take Custody of the *Ship Rising Sun*, and her Cargo, in his Majesty's Name, as an illicit Trader ; and, in order to the Condemnation of the said Ship and her Cargo, the Respondent instituted a Suit in the Vice-Admiralty Court in the Province of *Nova Scotia*, setting forth in his Libel,

10th July,  
1759. Libel  
in the Court  
of Admiralty  
for the Con-  
demnation of  
the Ship and  
her Cargo.

That by Act of Parliament, 15 *Cha. 2d*. Chap. 7. (and several other Statutes in that Case made) It is (*inter alia*) Enacted, That no Commodities of the Growth or Manufacture of *Europe* shall be imported into any of his Majesty's Plantations in *America* in any but *English*-built Ships, and before such Growth or Manufacture shall be first landed in some one of the Ports of *England, Wales, or Town of Berwick upon Tweed* ; and that no Wines, of the Growth of *Portugal, France, or Spain*, shall be imported into his Majesty's Plantations, without being first landed in *England, Wales, or Town of Berwick upon Tweed* ; under Penalty of the Forfeiture of such Goods, and the Vessel that carries them.

Notwithstanding which, one *James Bechino*, Master of the Ship the *Rising Sun*, had imported into the Harbour of *Halifax* a great Quantity of Wine, Fruit, and other contraband Goods, of the Growth of *Portugal or Spain*, which had not been landed in *England, Wales, or Town of Berwick upon Tweed*, according to the Directions of the said Statutes.

The Respondent, being examined, gave Evidence of the Report made to him of the Arrival of the Ship from *Oporto*, and taking her into Custody, to the Effect above-mentioned : And the Surveyor of the Customs deposed, That, upon searching the Ship, she was laden with *Port Wines and Lemons*.

Appellant's  
Claim and  
Answer to  
the Libel.

THE Appellant, in behalf of *Robert Grant*, Esquire, as Contractor and Agent Victualler to the Squadron under Admiral *Saunders*, and of Messieurs *Bearsley* and Co. and all others concerned, claimed the whole Cargo, for the Purpose for which it was alleged by the Appellant to be consigned ; namely, for the Supply and Refreshment of the Department of his Majesty's Fleet as aforesaid ; and by his Answer admitted the Act of Parliament mentioned in the Libel, and that it was calculated for the Benefit and Advantage of Trade ; but insisted that neither himself, nor any concerned, had done any thing contrary to the true Meaning and Construction of such Act, or any other Act whatsoever ; and denied the Importation of the Cargo in manner libelled ; and prayed that the said Ship and Cargo might proceed to the Fleet then lying in the River *St. Lawrence*, to supply them with the Refreshments laden on board.

The Appellant moved for Six Weeks Time to support his Claim ; and, after hearing Arguments on both Sides, the Judge declared, that, unless the Appellant expected, by obtaining Time, that he should be able to prove the Cargo to have been shipped according to Law, it would be to no Purpose to postpone the Cause for Delay only ; and the Appellant not shewing to the Court any Expectation of proving, within the Time he moved for, that the Cargo mentioned in the Libel was shipped according to Law, the Judge over-ruled that Motion.

The Appellant then produced in Evidence the several Papers above-mentioned, respectively marked, N<sup>o</sup> 1. N<sup>o</sup> 2. N<sup>o</sup> 3. and nothing more.

13th July,  
1759. Decree  
of the Court  
of Vice-Ad-  
miralty.

THE Judge, after taking Notice that all Matters requisite for a fair and impartial Tryal had been attended to, and that it appeared to him, from the Evidence of the Respondent, and the Surveyor of the Customs, that there had been imported into the Port of *Halifax*, in the *Ship Rising Sun*, a Quantity of Goods, the Produce or Manufacture of the Kingdom of *Portugal*, of which no Certificate had been produced, as by Law is required, of their having been landed in *England, Wales, or Town of Berwick upon Tweed* ; and further taking Notice, that the Appellant had appeared, and claimed the Ship and Cargo ; but had not produced any Certificate, or other Proof, that the said Goods, or any Part thereof, had been landed in *England, Wales, or Town of Berwick upon Tweed*, as they ought to have been.



been, and as by the said Statutes are directed ; decreed that the Ship *Rising Sun*, with all her Guns, Tackle, Ammunition, Apparel, and Furniture, as also all and singular the Goods and Merchandizes of the Growth, Produce, or Manufacture, of *Portugal*, the Cargo thereof, to be forfeited (excepting a Quantity of Salt, which was ordered to be restored to the Appellant, upon his paying the Costs of the Court which had arisen by the Claim) : And the Judge ordered the said Ship and condemned Cargo (being first appraised upon Oath) to be sold by the Marshal of the said Court, or his Deputy, at public Auction, on the 16th of the same Month ; and the Monies arising by the Sale to be paid into the Hands of the Register of the Court, to be by him divided and paid (after deducting Court and incident Charges thereon) as by the aforesaid Act is directed in such Cases.

From this Decree the Appellant prayed an Appeal to his late Majesty in Council, which was allowed accordingly : But the Respondent is advised, and humbly hopes, that the said Decree is right and just, and shall be Affirmed ; and that the said Appeal shall be Dismissed, for the following (amongst other)

## R E A S O N S :

- I. For that by the Act of 15th *Cha.* 2d. Chap. 7. and the other Statutes in that Case made and provided, the Importation of all Commodities of the Growth or Manufacture of *Europe*, and of all Wines of the Growth of *Portugal*, *France*, or *Spain*, into any of his Majesty's Plantations in *America*, is totally prohibited, under the Penalty of the Forfeiture of such Goods so imported, and the Vessel that carries them ; and there is not any Proviso, Clause, or Sentence, in the said Acts, or any of them, whereby Wines, Fruit, or other Goods, of the Growth of *Portugal* or *Spain*, imported into any of his Majesty's Plantations in *America* for the Use of any of his Majesty's Squadrons, without being first landed in *England*, *Wales*, or Town of *Berwick upon Tweed*, are exempted from the Penalties contained in those Acts, or any of them.
- II. For that if Provisions for his Majesty's Fleet, of the Growth of *Portugal* or *Spain*, may be imported into any of his Majesty's Plantations in *America* (notwithstanding the said Acts of Parliament), without being first landed in *England*, *Wales*, or Town of *Berwick upon Tweed* ; yet the Respondent humbly conceives, that it ought to appear by the clearest, plainest, and the most demonstrative Evidence, that the Goods so imported are for the Use of his Majesty's Fleet : But it appeared, by the Papers produced in Evidence by the Appellant, that the Goods imported into *Halifax* were imported in the Ship called *Rising Sun*, and came directly from *Oporto* to *Halifax*, consigned to Mr. *John Grant* at *Halifax* ; whereas the Goods intended to be protected by Admiral *Saunders's* Certificate were, in the said Certificate, mentioned to be sent in the Snow *Boscawen* from *Oporto* directly to *Louisburgh*, which was then the general Rendezvous of his Majesty's Fleet in *America* ; and the said Appellant did not produce any Evidence to shew how the said Snow *Boscawen* was employed at that time, so as not to be able to carry the Refreshments, pursuant to the Admiral's Certificate ; and as it can be proved that a Vessel, laden with Wine and Fruit, sailed from *Oporto* to *Louisburgh* (the Admiral's Rendezvous), at the same time that the *Rising Sun* sailed for *Halifax*, and arrived in the River *St. Lawrence*, it is very reasonable to conclude, that the Cargo imported in the Ship *Rising Sun* was not the same Cargo that was intended to be protected by Admiral *Saunders's* Certificate ; and the more so, as Wines for the Use of his Majesty's Fleets abroad are constantly sent in Pipes and Buts, whereas the Wines in the *Rising Sun* were in Quarter Casks, Five-Quarter Casks, and Hampers.
- III. For that, unless Seizures and Condemnations are made of Vessels and their Cargoes coming into the Plantations, and importing Wines, Fruit, or other Goods, of the Growth of *Portugal*, *France*, or *Spain*, and *East India* Goods from *Holland*, without being first landed in *England*, *Wales*, or Town of *Berwick upon Tweed*, the illicit Trade, which has long been carried on there, of importing Wine, Fruit, and other Goods, for Sale, under Pretext of their being for the Use and Refreshment of his Majesty's Fleets, will greatly increase, in Fraud of his Majesty's Revenue, and to the Prejudice of the fair-trading Merchants residing in the Plantations.

C. YORKE.  
R. SMALBROKE.

The Respondent's Case

The Appellant's Case

The Respondent's Case



John Grant - - - Appellant.

Henry Newton - - - Respondent.

**The Respondent's C A S E.**

To be Heard at the Council Chamber, White Hall, on the 20<sup>th</sup> Day of January, 1761.  
At 12 o'Clock out Noon.

Whereas Seizures and Condemnations are made of Vessels and their Cargoes being first landed in England, Wales, or Town of Berwick upon Tyne, and then imported into the Plantations, and importing Wines, Fruit, or other Goods, of the Growth of Portugal, France, or Spain, and East India Goods from Holland, without being first landed in England, Wales, or Town of Berwick upon Tyne, the said Goods, for sale, under Pretence of their being for the Use and Refreshment of his Majesty's Fleet, will greatly increase, in Favour of his Majesty's Revenue, and to the Prejudice of the said Plantations.

**C. YORK.**  
**R. SMALLBROKE.**

For that it is provided by his Majesty's Statute, of the Growth of Portugal or Spain, may be imported into any of his Majesty's Plantations in America (notwithstanding the said Acts of Parliament), without being first landed in England, Wales, or Town of Berwick upon Tyne; yet the Respondent humbly shews, that it is not the Goods to be imported are for the Use of his Majesty's Fleet; but it is proved by the Papers produced in Evidence by the Appellant, that the Goods were imported in the Ship called *Rising Sun*, and came directly from the said *Rising Sun*, consigned to Mr. John Grant at Halifax, whereas the Goods were imported by Admiral Boscawen's Certificate were in the said *Cornwall*; and it was then the general Rendezvous of his Majesty's Fleet in America; and the Appellant did not produce any Evidence to shew how the said *Rising Sun* was employed at that time, so as not to be able to carry the *Rising Sun* Wine and Fruit, sailed from Oporto to England, (the Admiral's Certificate, at the same time that the *Rising Sun* sailed for Halifax, and arrived at Halifax, it is very reasonable to conclude, that the Cargo imported in the said *Rising Sun* was not the same Cargo that was intended to be imported by Admiral Boscawen's Certificate; and the more so, as Wines for the Use of his Majesty's Fleet are constantly sent in Pipes and Butts, whereas the Wines were in Quarter Casks, Five-Quarter Casks, and Hampers.

For that by the Act of 15th Chas. 2d. Chap. 7. and the other Statutes in that Case made and provided, the Importation of all Commodities of the Growth of Portugal, France, or Spain, and of all Wines of the Growth of Portugal, France, or Spain, into any of his Majesty's Plantations in America, is totally prohibited; under the Penalty of the Forfeiture of such Goods so imported, and the Vessel that carries them; and there is not any Provision, Clause, or Sentence, in the said Acts, or any of them, whereby Wines, Fruit, or other Goods, of the Growth of Portugal or Spain, imported into any of his Majesty's Plantations in America for the Use of any of his Majesty's squadrons, without being first landed in England, Wales, or Town of Berwick upon Tyne, are exempted from the Penalties contained in those Acts, or any of them.

From this Decree the Appellant prayed an Appeal to his Majesty in Council, which was allowed accordingly; But the Respondent shewed, and humbly hopes, that the said Decree is right and just, and shall be Affirmed; and that the said Appeal shall be Dismissed, for the following (amongst other) Reasons.

And as by the said Statutes are directed: Decreed that the Ship *Rising Sun*, with all her Guns, Tackle, Ammunition, Apparel, and Furniture, as also all and singular the Goods and Merchandises of the Growth of Portugal, France, or Spain, and the Goods thereof, to be forfeited (excepting a Quantity of Salt, which was ordered to be restored to the Appellant upon his paying the Costs of the Court, which had been by the Statute) And the Judge ordered the said Ship and condemned Cargo (being first appraised upon Oath) to be sold by the Marshal of the said Court, or his Deputy, at Public Auction, on the 10th of the same Month; and the Money arising by the Sale to be paid into the Hands of the Receiver of the Court, to be by him divided and paid (after deducting Court and incidental Charges thereon) as by the Statute Act is directed in such Cases.